



House of Representatives

General Assembly

File No. 134

January Session, 2009

Substitute House Bill No. 6470

House of Representatives, March 23, 2009

The Committee on General Law reported through REP. SHAPIRO of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16a-21 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) [No person, firm or corporation shall sell at retail fuel oil or
4 propane gas to be used for residential heating without placing the unit
5 price, clearly indicated as such, the total number of units sold and the
6 amount of any delivery surcharge in a conspicuous place on the
7 delivery ticket given to the purchaser or an agent of the purchaser at
8 the time of delivery. No person, firm or corporation may bill or
9 otherwise attempt to collect from any purchaser of fuel oil or propane
10 gas an amount which exceeds the unit price multiplied by the total
11 number of units stated on the delivery ticket, plus the amount of any
12 delivery surcharge stated on the ticket.] For the purpose of this section,
13 unit price means the price per gallon computed to the nearest tenth of
14 a whole cent.

15 (b) (1) No person, firm or corporation shall sell at retail fuel oil or
16 propane gas to be used for residential heating without a written
17 contract that contains all the terms and conditions for delivery of such
18 fuel oil or propane gas and the amount of fees, charges or penalties
19 allowed under this subsection assessed to the consumer under such
20 contract. No written contract shall contain any fees, charges or
21 penalties except for propane tank rental fees, propane tank removal
22 fees, liquidated damages and such other penalties for violation of the
23 contract terms. Such fees may increase during the contract term
24 provided the amount of such fees are clearly and conspicuously
25 disclosed. No contract for the delivery of fuel oil or propane gas under
26 this section shall include a provision for liquidated damages for a
27 consumer breach of such contract where the liquidated damages
28 exceeds the actual damages to the fuel oil or propane gas retailer
29 caused by such breach. If a propane tank is being supplied to the
30 purchaser, such contract shall provide the purchaser with the
31 opportunity to purchase the propane tank for the fair market value of
32 the tank upon expiration of the contract. Fair market value shall be net
33 of depreciation. Any fuel oil or propane gas retailer may enter into a
34 separate contract with the purchaser for additional services such as
35 maintenance, repair and warranty of equipment, provided such
36 contract complies with the provisions of this section. No written
37 contract period shall be for a period greater than thirty-six months.

38 (2) Any written contract required by this section shall be in plain
39 language pursuant to section 42-152, provided any fee, charge or
40 penalty disclosed in such contract shall be in twelve-point, boldface
41 type of uniform font.

42 (c) The requirement that contracts be in writing as set forth in this
43 section may be satisfied pursuant to the provisions of: (1) The
44 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-
45 286, inclusive, (2) sections 42a-7-101 to 42a-7-106, inclusive, and (3) the
46 Electronic Signatures in Global and National Commerce Act, 15 USC
47 7001 et seq. Except as provided in subsection (d) of this section, verbal
48 telephonic communications shall not satisfy the writing requirement of

49 this section.

50 (d) The requirement that contracts be in writing pursuant to this
51 section and section 16a-23n, as amended by this act, may be satisfied
52 telephonically by a person, firm or corporation selling at retail fuel oil
53 or propane gas, only if such person, firm or corporation: (1) Has
54 provided to the consumer prior to any telephonic communication all
55 terms and conditions of the contract, in writing, except for the contract
56 duration, the unit price and the maximum number of units covered by
57 the contract, (2) employs an interactive voice response system or
58 similar technology which provides the consumer with the contract
59 duration, the unit price and the maximum number of units covered by
60 the contract, to complete the contract, (3) retains, in a readily
61 retrievable format, a recording of the consumer agreeing to each such
62 term and condition for the period of the contract plus one year, (4)
63 sends the consumer a letter confirming the consumer's agreement to
64 such terms and conditions, with the written stipulation that the
65 consumer is bound by such terms and conditions unless the agreement
66 is rescinded by the consumer, in writing, not later than three business
67 days after receipt of such letter by said consumer, and (5) retains a
68 copy of each such letter.

69 (e) (1) No person, firm or corporation shall deliver fuel oil or
70 propane gas to be used for residential heating, without placing the unit
71 price, clearly indicated as such, the total number of units sold and the
72 amount of any delivery surcharge in a conspicuous place on the
73 delivery ticket given to the purchaser or an agent of the purchaser at
74 the time of delivery. No person, firm or corporation may bill or
75 otherwise attempt to collect from any purchaser of fuel oil or propane
76 gas an amount which exceeds the unit price multiplied by the total
77 number of units stated on the delivery ticket, plus the amount of any
78 delivery surcharge stated on the ticket.

79 (2) The requirement that contracts be in writing as set forth in this
80 section shall not apply to any retail fuel oil or propane gas contract
81 where no fee, charge or penalty is assessed, except for stating the unit

82 price of the retail fuel oil or propane gas delivered to a consumer and
83 any surcharge authorized under section 16a-22b, as amended by this
84 act.

85 (f) The provisions of this section shall not apply to existing
86 customers of a person, firm or corporation selling at retail fuel oil or
87 propane gas on October 1, 2009, who have valid written contracts on
88 said date. The provisions of this section shall apply as of the renewal
89 dates of such contracts.

90 (g) The provisions of this section shall not apply to an existing
91 customer of a person, firm or corporation selling at retail fuel oil or
92 propane gas on October 1, 2009, who does not have a valid written
93 contract in effect on said date, if such existing customer receives a
94 written contract prior to October 1, 2009, containing all the terms and
95 conditions for delivery of such fuel oil or propane gas and the amount
96 of any fee, charge or penalty allowed under this section that such
97 person, firm or corporation shall assess to the customer under such
98 contract, provided: (1) Fees in such contract shall not be greater than
99 the fees charged to such existing customer on October 1, 2009, and may
100 not increase during the contract term; (2) the existing customer may
101 reject such contract by notifying the person, firm or corporation selling
102 at retail such fuel oil or propane gas not later than sixty days after the
103 receipt of such written contract without any penalty, including, but not
104 limited to, a tank removal fee; and (3) such written contract shall be
105 effective if the existing customer does not reject such contract not later
106 than sixty days after receipt of such contract.

107 (h) No person, firm or corporation selling fuel oil or propane gas to
108 be used for residential heating shall be required to maintain a written
109 contract pursuant to this section if such person, firm or corporation
110 lists on the delivery ticket for such fuel oil or propane gas all of the
111 terms and conditions required by this section.

112 (i) A violation of the provisions of this section constitutes an unfair
113 trade practice under subsection (a) of section 42-110b.

114 [(b)] (j) Any person, firm or corporation who violates subsection
115 [(a)] (e) of this section shall be fined not more than one hundred
116 dollars for the first offense [nor] or more than five hundred dollars for
117 each subsequent offense.

118 Sec. 2. Section 16a-22b of the general statutes is repealed and the
119 following is substituted in lieu thereof (*Effective July 1, 2009*):

120 (a) No retail dealer of fuel oil or propane shall assess a surcharge on
121 the price of fuel oil or propane delivered to a customer if the delivery
122 of the fuel oil or propane is in an amount in excess of one hundred
123 gallons, except that a surcharge may be assessed if a delivery is made
124 outside the normal service area or the normal business hours of the
125 dealer or extraordinary labor costs are involved in making a delivery.
126 No other fee, charge or penalty may be assessed, except as provided in
127 section 16a-21, as amended by this act.

128 (b) No retail dealer of fuel oil or propane shall assess a residential
129 customer a minimum delivery surcharge on any delivery initiated by
130 the seller, including any delivery under an automatic delivery
131 agreement.

132 (c) A violation of the provisions of this section constitutes an unfair
133 trade practice under subsection (a) of section 42-110b.

134 Sec. 3. Subsection (d) of section 20-327b of the general statutes is
135 repealed and the following is substituted in lieu thereof (*Effective July*
136 *1, 2009*):

137 (d) (1) The Commissioner of Consumer Protection [,] shall, by
138 regulations adopted in accordance with the provisions of chapter 54,
139 prescribe the form of the written residential disclosure report required
140 by this section and sections 20-327c to 20-327e, inclusive. The
141 regulations shall provide that the form include information concerning
142 municipal assessments, including, but not limited to, sewer or water
143 charges applicable to the property. Such information shall include: (A)
144 Whether such assessment is in effect and the amount of the

145 assessment; (B) whether there is an assessment on the property that
146 has not been paid, and if so, the amount of the unpaid assessment; and
147 (C) to the extent of the seller's knowledge, whether there is reason to
148 believe that the municipality may impose an assessment in the future.

149 (2) Such form of the written residential disclosure report shall
150 contain the following:

151 (A) A certification by the seller in the following form:

152 "To the extent of the seller's knowledge as a property owner, the
153 seller acknowledges that the information contained above is true and
154 accurate for those areas of the property listed. In the event a real estate
155 broker or salesperson is utilized, the seller authorizes the brokers or
156 salespersons to provide the above information to prospective buyers,
157 selling agents or buyers' agents.

T1 (Date) (Seller)

T2 (Date) (Seller)"

158 (B) A certification by the buyer in the following form:

159 "The buyer is urged to carefully inspect the property and, if desired,
160 to have the property inspected by an expert. The buyer understands
161 that there are areas of the property for which the seller has no
162 knowledge and that this disclosure statement does not encompass
163 those areas. The buyer also acknowledges that the buyer has read and
164 received a signed copy of this statement from the seller or seller's
165 agent.

T3 (Date) (Seller)

T4 (Date) (Seller)"

166 (C) A statement concerning the responsibility of real estate brokers
167 in the following form:

168 "This report in no way relieves a real estate broker of the broker's
169 obligation under the provisions of section 20-328-5a of the Regulations

170 of Connecticut State Agencies to disclose any material facts. Failure to
171 do so could result in punitive action taken against the broker, such as
172 fines, suspension or revocation of license."

173 (D) A statement that any representations made by the seller on the
174 written residential disclosure report shall not constitute a warranty to
175 the buyer.

176 (E) A statement that the written residential disclosure report is not a
177 substitute for inspections, tests and other methods of determining the
178 physical condition of property.

179 (F) Information concerning environmental matters such as lead,
180 radon, subsurface sewage disposal, flood hazards and, if the residence
181 is or will be served by well water, as defined in section 21a-150, the
182 results of any water test performed for volatile organic compounds
183 and such other topics as the Commissioner of Consumer Protection
184 may determine would be of interest to a buyer.

185 (G) A statement that information concerning the residence address
186 of a person convicted of a crime may be available from law
187 enforcement agencies or the Department of Public Safety and that the
188 Department of Public Safety maintains a site on the Internet listing
189 information about the residence address of persons required to register
190 under section 54-251, 54-252, 54-253 or 54-254, who have so registered.

191 (H) If applicable, a statement disclosing that there is a propane gas
192 tank of a capacity in excess of twenty gallons located on such property,
193 the name of the owner of such tank and any contract related to such
194 tank.

195 Sec. 4. Section 16a-23n of the general statutes is repealed and the
196 following is substituted in lieu thereof (*Effective October 1, 2009*):

197 (a) As used in this section:

198 (1) "Capped price contract" means an agreement where the cost to
199 the consumer of heating oil or propane may not increase above a

200 specified price per gallon but the consumer may pay less than the
201 specified price under circumstances specified in such contract;

202 (2) "Fixed price contract" means an agreement where the cost to the
203 consumer of heating oil or propane is set at a specific price during the
204 term of the contract;

205 (3) "Futures contract" means a standardized, transferable, exchange-
206 traded agreement that requires delivery of heating oil or propane at a
207 specified price on a specified future date;

208 (4) "Guaranteed price contract" means a fixed price or capped price
209 contract or any other agreement where the per gallon price for heating
210 oil or propane is set at a specified amount unless certain circumstances
211 occur;

212 (5) "Physical supply contract" means an agreement for wet barrels or
213 wet gallons of propane that has been secured by the heating oil or
214 propane dealer from a wholesaler;

215 (6) "Secured letter of credit" means a standby, revolving or
216 irrevocable letter of credit issued by a bank or other state or federally
217 chartered financial institution that provides for the Department of
218 Consumer Protection to be named beneficiary in the event of a default
219 by a dealer in the promise of delivery of heating oil or propane under
220 contract to consumers; and

221 (7) "Surety bond" means a bond issued by a licensed insurance
222 company on behalf of a dealer, guaranteeing that such company will
223 reimburse any consumer losses incurred as a result of the failure of the
224 dealer to fulfill an obligation to a consumer.

225 [(a)] (b) A contract for the retail sale of home heating oil or propane
226 gas that offers a guaranteed price [plan] contract, including fixed or
227 capped price contracts and any other similar terms, shall be in writing
228 and the terms and conditions of such price plan shall be disclosed,
229 including a description of the circumstances under which the price
230 may increase or decrease. Such disclosure shall be in plain language

231 and shall immediately follow the language concerning the price or
232 service that could be affected and shall be printed in no less than
233 twelve-point boldface type of uniform font.

234 [(b)] (c) A home heating oil or propane gas dealer that advertises a
235 price shall offer such price for a period of no less than twenty-four
236 hours or until the next advertised price is publicized, whichever occurs
237 first.

238 [(c)] (d) No home heating oil or propane gas dealer shall enter into,
239 renew or extend a [prepaid home heating oil or propane gas contract
240 or a capped price per gallon home heating oil contract] guaranteed
241 price contract unless such dealer has, not later than five business days
242 after receipt of a such guaranteed price contract, either: (1) Obtained
243 and maintained heating oil or propane gas futures or forwards
244 contracts, physical supply contracts or other similar commitments the
245 total amount of which allow such dealer to purchase, at a fixed price,
246 heating oil or propane gas in an amount not less than eighty per cent
247 of the maximum number of gallons or amount that such dealer is
248 committed to deliver pursuant to all [prepaid home heating oil or
249 propane gas] guaranteed price contracts entered into, renewed or
250 extended by such dealer, [or that such dealer estimates is committed
251 pursuant to all capped price per gallon home heating oil or capped
252 price per unit propane gas contracts, respectively, or] (2) obtained and
253 maintained a surety bond in an amount not less than fifty per cent of
254 the total amount of funds paid to the dealer by consumers [pursuant to
255 prepaid home heating oil or propane gas contracts] or that the dealer
256 estimates will be paid to the dealer by consumers pursuant to all
257 [capped price per gallon home heating oil or capped price per unit
258 propane gas contracts, respectively] guaranteed price contracts, or (3)
259 obtained a secured letter of credit in an amount not less than fifty per
260 cent of the total amount of funds paid to the dealer by consumers
261 pursuant to guaranteed price contracts. Such dealer shall maintain
262 such total amount of futures or forwards contracts, physical supply
263 contracts or other similar commitments, a secured letter of credit or the
264 amount of the surety bond required by this subsection for the period of

265 time for which such [prepaid home heating oil or propane gas
266 contracts or capped price per gallon home heating oil or capped price
267 per unit propane gas contracts] guaranteed price contracts are
268 effective, except that the total amount of such futures or forwards
269 contracts, physical supply contracts or other similar commitments, the
270 secured letter of credit or the amount of the surety bond may be
271 reduced during such period of time to reflect any amount of home
272 heating oil or propane gas already delivered to and paid for by the
273 consumer.

274 [(d)] (e) No [prepaid home heating oil or propane gas] guaranteed
275 price contract shall require any consumer commitment to purchase
276 home heating oil or propane gas pursuant to the terms of such contract
277 for a period of more than eighteen months.

278 [(e)] (f) Any [prepaid home heating oil or propane gas] guaranteed
279 price contract shall indicate: (1) The amount of funds paid by the
280 consumer to the dealer under such contract, (2) the maximum number
281 of gallons of home heating oil or maximum amount of propane gas
282 committed by the dealer for delivery to the consumer pursuant to such
283 contract, and (3) that performance of such prepaid home heating oil or
284 propane gas contract is secured by one of the two options described in
285 subsection [(c)] (d) of this section. Any such contract shall provide that
286 the contract price of any undelivered home heating oil or propane gas
287 owed to the consumer under the contract, on the end date of such
288 contract, shall be reimbursed to the consumer not later than thirty days
289 after the end date of such contract unless the parties to such contract
290 agree otherwise.

291 [(f)] (g) Each home heating oil or propane gas dealer who enters
292 into, renews or extends [prepaid home heating oil or propane gas
293 contracts or capped price per gallon home heating oil contracts or
294 capped price per unit propane gas contracts] capped price contracts,
295 fixed price contracts or guaranteed price contracts shall inform the
296 Commissioner of Consumer Protection, in writing, that such dealer is
297 entering into, renewing or extending such contracts and shall identify

298 any entity from which the dealer has secured futures or forwards
299 contracts or other similar commitments secured lines of credit or
300 surety bonds pursuant to subsection [(c)] (d) of this section. Each such
301 dealer shall notify the commissioner if at any time the total amount of
302 such secured futures or forwards contracts, physical supply contracts
303 or other such similar commitments or secured lines of credit or surety
304 bonds held by the dealer is less than eighty per cent of the maximum
305 number of gallons or amount that such dealer is committed to deliver
306 pursuant to all such [prepaid home heating oil or propane gas]
307 contracts entered into, renewed or extended by such dealer or that
308 such dealer estimates it is committed to deliver pursuant to all of its
309 [capped price per gallon home heating oil or capped price per unit
310 propane gas contracts] capped price contracts, fixed price contracts or
311 guaranteed price contracts, respectively. The commissioner shall
312 prescribe the form in which such information shall be reported.

313 [(g)] (h) Each person from which a home heating oil or propane gas
314 dealer has secured a futures [or forwards] contract, physical supply
315 contract or other similar commitment pursuant to subsection [(c)] (d)
316 of this section or who provides a bond or secured letter of credit
317 pursuant to this section shall notify the Commissioner of Consumer
318 Protection, in writing, of the cancellation of such contract, [or] other
319 similar commitment or of the cancellation of such bond or secured
320 letter of credit not later than three business days after such
321 cancellation.

322 (i) The provisions of any guaranteed price contract shall not be
323 enforceable against the estate or survivors upon the death of the
324 customer signing such contract unless such estate or survivor has
325 accepted an express assignment of such contract in writing.

326 Sec. 5. Section 16a-23r of the general statutes is repealed and the
327 following is substituted in lieu thereof (*Effective October 1, 2009*):

328 (a) A violation of the provisions of section 16a-23m, 16a-23n, as
329 amended by this act, or 16a-23o constitutes an unfair trade practice
330 under subsection (a) of section 42-110b.

331 (b) In accordance with the provisions of section 53a-11, any home
332 heating oil dealer who knowingly violates the provisions of subsection
333 [(c)] (d) of section 16a-23n, as amended by this act, shall have
334 committed a class A misdemeanor.

335 Sec. 6. (NEW) (*Effective July 1, 2009*) Nothing in sections 1 to 5,
336 inclusive, of this act shall validate a provision or clause that would
337 otherwise be unenforceable pursuant to section 42-150u of the general
338 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	16a-21
Sec. 2	<i>July 1, 2009</i>	16a-22b
Sec. 3	<i>July 1, 2009</i>	20-327b(d)
Sec. 4	<i>October 1, 2009</i>	16a-23n
Sec. 5	<i>October 1, 2009</i>	16a-23r
Sec. 6	<i>July 1, 2009</i>	New section

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Cost	145,000	140,000
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential
State Comptroller - Fringe Benefits ¹	GF - Cost	77,000	77,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in an estimated cost to the state of approximately \$217,000 per year due to staffing needs at the Department of Consumer Protection (DCP). The cost in FY 10 would be approximately \$4,500 higher due to start-up equipment needs such as computers and associated peripherals. The personnel costs include one Staff Attorney and a Consumer Protection Inspector for Weights and Measures, plus any associated fringe benefits.

The bill also results in a potential revenue gain due to potential violations of the Connecticut Unfair Trade Practices Act (CUTPA).

The Out Years

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6470*****AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACTS.*****SUMMARY:**

This bill requires parties entering into an agreement for the retail sale of fuel oil or propane gas for residential heating to execute a written or qualifying contract containing the terms and conditions for delivery and any potential fees, charges, or penalties. The bill restricts the fees a retailer may charge and limits potential liquidated damages. The contract must also allow the customer to purchase the propane tank for fair market value at the end of the contract. The bill does not require a written contract if the terms and conditions are fully disclosed on the delivery ticket. A violation is an unfair trade practice.

The bill also amends the written residential disclosure report to include, if applicable, a statement disclosing the existence of a propane tank in excess of 20 gallons, the name of the tank owner, and the related contract.

The bill defines “guaranteed price contract” to include all forms of prepaid and fixed-price heating oil and propane contracts. It (1) adds physical supply contracts and a letter of credit as acceptable forms of security to ensure delivery and (2) requires that the commitments obtained through futures or physical supply contracts be at least 80% of the maximum number of gallons that the dealer is committed to deliver. It requires any holder of a futures contract, surety bond, physical supply contract, or letter of credit to notify the Department of Consumer Protection (DCP) of any cancellation.

EFFECTIVE DATE: Various

§ 1 — CONTRACTS

The bill requires parties entering into an agreement for the retail sale of fuel oil or propane gas for residential heating to execute a written contract for a maximum period of 36 months. By law, retailers must include the unit price, units sold, and delivery surcharge on the delivery tag. Retailers may not collect more than the ticket value.

The contract must contain the terms and conditions for delivery and, in 12-point bold type, any fees, charges, or penalties that may be imposed. The only fees allowed under the contract are the cost of tank rental, tank removal, contract violation penalties, and liquidated damages. There may be no liquidated damages provision allowing for the damages to exceed the actual damage to the retailer. A retailer may increase its fees during the contract period if such increase is clearly and conspicuously disclosed. Individuals may enter into separate contracts for additional services, such as maintenance, repair, and equipment warranty. If a propane tank is supplied, the contract must allow for its purchase at fair market value, net of depreciation when the contract expires.

The bill allows dealers to meet the written contract requirement by meeting the requirements of the Connecticut Uniform Electronic Transaction Act, the federal Electronic Signatures in Global and National Commerce Act, and provisions about electronic contracts in the Uniform Commercial Code (see BACKGROUND).

Oral or telephonic agreements do not satisfy the written contract requirement unless they meet certain conditions before the telephone conversation, the consumer must be given a written copy of the terms and conditions. And the retailer must (1) use an interactive system providing the duration, unit price, and maximum number of units covered by the contract; (2) retain readily retrievable recordings of the agreement for at least one year beyond the contract; (3) send a confirmation letter informing the consumer that the contract is binding unless he or she rescinds it in writing within three days of receipt of the confirmation; and (4) retain a copy of the confirmation letter. The

written contract requirement does not apply to contracts without fees, charges, or penalties assessed, but such contracts must state the unit price and surcharges.

The preceding provisions do not apply to existing customers with valid contracts on October 1, 2009. They also do not apply to customers without valid contracts if the customer receives a written contract before October 1, 2009 containing the terms and conditions, fees, surcharges, and penalties, provided:

1. fees are not greater than existing fees and may not increase;
2. an existing customer may reject the contract within 60 days with no penalty, including for tank removal.

The written contract is effective if not rejected within 60 days of receipt.

A violation of these provisions is an unfair trade practice (see BACKGROUND).

EFFECTIVE DATE: October 1, 2009

§ 2 — SURCHARGES

Current law prohibits retailers from charging a surcharge for deliveries greater than 100 gallons unless the delivery is outside the normal service area or business hours or involves extraordinary labor costs. This bill prohibits any other fee, charge, or penalty on such deliveries, and makes violations an unfair trade practice.

EFFECTIVE DATE: July 1, 2009

§ 3 — RESIDENTIAL DISCLOSURE

The law requires a real estate seller to give prospective purchasers a residential condition report before the binder or contract is executed in a residential real estate transaction (i.e., sale, exchange, or lease with option to buy). The report discloses information about the property and environmental matters, such as lead and radon. The bill amends

the required written residential disclosure report to include, if applicable, a statement disclosing the existence of a propane tank in excess of 20 gallons, the name of the tank owner, and the related contract.

EFFECTIVE DATE: July 1, 2009

§§ 4, 5 — GUARANTEED PRICE CONTRACTS

The bill requires that “guaranteed price contracts”, instead of contracts offering a “guaranteed price plan,” for the retail sale of home heating oil or propane gas be in writing include a fixed or capped price contract, or any other agreement where there is a set per gallon price unless certain circumstances occur. The latter include fixed price contracts.

The bill defines a “capped price contract” as an agreement where the cost to the consumer may not increase above a specified price per gallon but may be reduced under circumstances specified in such contract. It defines a “fixed price contract” as an agreement where the cost to the consumer is set at a specific price for the term of the contract. The bill requires that guaranteed price contracts describe the circumstances in which the price may change.

The bill adds physical supply contracts to the commitments allowing dealers to purchase heating oil or propane gas in an amount not less than 80% of the maximum number of gallons that the dealer is committed to deliver. These are agreements for wet barrels or wet gallons of propane that has been secured by the heating oil or propane dealer from a wholesaler. It also adds a secured letter of credit at 50% of the total funds paid by consumers for guaranteed price contracts to the acceptable forms of security. A “secured letter of credit” is a standby, revolving, or irrevocable letter of credit issued by a bank or other state or federally chartered financial institution that provides for DCP to be named beneficiary if a dealer defaults on a promise to deliver heating oil or propane under contract to consumers.

Currently, a dealer must obtain (1) heating oil or propane gas

futures or forward contracts or other similar commitments or (2) a surety bond of at least 50% of the total amount of funds paid by consumers. The bill defines “surety bond” as a bond issued by a licensed insurance company on behalf of a dealer, guaranteeing that the company will reimburse any consumer losses incurred as a result of the dealer’s failure to fulfill an obligation to a consumer. Dealers must maintain the total amount of futures and forwards contracts, physical supply contracts, and secured credit for the effective life of the guaranteed price contracts, though they may be reduced to reflect payment and delivery. Under the bill, a “futures contract” is a standardized, transferable, exchange-traded agreement requiring delivery of heating oil or propane at a specified price on a specified future date.

The bill requires these security forms to be obtained within five days of receipt of the guaranteed price contract.

A dealer entering into, extending, or renewing capped, fixed, or guaranteed price contracts must (1) inform DCP in writing, (2) identify secured lines of credit or surety bonds, and (3) notify DCP at any time the physical supply contracts or secured lines fall below 80% of the maximum gallons the dealer is committed to deliver. The dealer already must identify secured futures or forwards contracts and report those below 80%. The bill requires persons from whom a dealer has a physical supply contract or bond or secured letter of credit to notify DCP of cancellation; futures contracts cancelled must already be reported under current law. The provisions of guaranteed price contracts are not enforceable against the estate or survivors upon the customer’s death unless express assignment was accepted in writing.

Under the bill, violations are an unfair trade practice.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

E-Sign Laws

The Connecticut Uniform Electronic Transactions Act establishes a

legal basis to use electronic communications in transactions in which the parties have agreed to conduct business electronically. The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) validates the use of electronic records and signatures (15 USC § 7001 *et seq.*). The Uniform Commercial Code modifies the federal law in certain ways to the extent federal law allows (CGS § 42a-7-101 *et seq.*).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Related Bills

The General Law Committee favorably reported HB 5400, which requires the written residential condition report used in residential real estate transactions to include a statement listing all leased items on residential property, including propane tanks and security system hardware.

The Insurance and Real Estate Committee favorably reported sHB 6114, which requires the residential condition report to include a statement that if the property is historic or in an historic district or village, a person may contact the town clerk for compliance requirements information for the property.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 14 Nay 4 (03/05/2009)